

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

OCEAN VIEW ELEMENTARY SCHOOL  
DISTRICT AND WEST ORANGE  
COUNTY CONSORTIUM FOR SPECIAL  
EDUCATION

OAH CASE NO. 2012110649

ORDER GRANTING MOTION TO  
DISMISS CLAIMS OUTSIDE OAH'S  
JURISDICTION

On November 21, 2012, Parents on behalf of Student (Student), through their attorney, Kathleen M. Loyer, filed a Due Process Hearing Request<sup>1</sup> (complaint) naming the Ocean View Elementary School District (District) and the West Orange County Consortium for Special Education (WOCCSE).

On December 17, 2012, attorney for District, Karen Van Dijk, filed a "partial" motion to dismiss portions of Student's Issues One through Four that are outside the jurisdiction of the Office of Administrative Hearings (motion). Student did not file a response, nor did WOCCSE.<sup>2</sup>

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate

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<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

<sup>2</sup> However, in her complaint, Student appears to concede that OAH does not have jurisdiction to determine non-IDEA issues, and that she suspects that OAH would dismiss such issues outside its jurisdiction. Student is correct in her suspicion.

public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) or Section 1983 of Title 42 United States Code, the ADA, or the Unruh Act.

## DISCUSSION

OAH’s jurisdiction is limited to disputes arising out of the IDEA and California’s implementing special education laws. Student’s complaint identifies four issues (Issues One through Four). In each of the four issues, Student alleges various violations under the IDEA. Those alleged violations under the IDEA and/or California implementing special education laws are within OAH’s jurisdiction, and are not the subject of District motion to dismiss.

However, in Student’s Issues One through Four, Student also alleges that her rights under **Section 504 of The Rehabilitation Act of 1973 (Section 504)** and **Section 1983 of Title 42 United States Code (Civil Rights Act)** were violated. District alleges that OAH lacks jurisdiction to entertain portions of Student’s Issues One through Four brought under Section 504 or the Civil Rights Act (non-IDEA claims). Thus, District requests that the non-IDEA claims contained in Student’s complaint be dismissed.

As noted above under the applicable law, OAH does not have jurisdiction to entertain the non-IDEA claims brought under Section 504 and the Civil Rights Act.<sup>3</sup> Accordingly, OAH hereby declines jurisdiction on Student’s Section 504 or the Civil Rights Act claims. Those portions of Student’s Issues One through Four that are based on Section 504 or the Civil Rights Act are hereby dismissed.

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<sup>3</sup> Student appears to concede this fact, as she indicated in her complaint that these issues were raised for exhaustion purposes, and that she expects OAH to decline jurisdiction. Thus, both parties agree that OAH lacks jurisdiction over the non-IDEA claims raised in Student’s Issue One through Four.

## ORDER

1. District's motion to dismiss portions of Student's Issues One through Four that are based on Section 504 or the Civil Rights Act is granted.
2. All issues or allegations based on Section 504 or the Civil Rights Act are dismissed.
3. The matter shall proceed to hearing based on the remaining issues/allegations that are properly brought under the IDEA or the California implementing special education laws.

IT IS SO ORDERED.

Dated: December 27, 2012

/s/

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ADENIYI AYOADE  
Administrative Law Judge  
Office of Administrative Hearings